

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
EXAERIS, INC., and)	Case No. 07-10887 (KG)
INYX USA, LTD.,¹)	Case No. 07-10888 (KG)
)	
Debtors.)	
<hr/>)	
)	
DR. JACK KACHKAR,)	
)	
Appellant)	Civil Action No. 07-621 (GMS)
v.)	Civil Action No. 08-270 (SLR)
)	
WESTERNBANK PUERTO RICO,)	
STEPHEN S. GRAY, Chapter 11)	
Trustee of INYX USA, LTD.)	
)	
Appellees.)	
)	

**SUPPLEMENTAL OBJECTION OF WESTERNBANK
PUERTO RICO TO APPELLANT’S MOTION
FOR AN ORDER (I) CONSOLIDATING APPEALS AND
(II) EXCUSING PARTIES FROM THE MEDIATION
REQUIREMENTS OF THIS COURT’S JULY 23, 2004 STANDING ORDER**

Westernbank Puerto Rico (“Westernbank”) submits this supplemental objection to the motion (the “Motion”) submitted by Appellant Jack Kachkar (“Appellant”) for an order (i) consolidating the above-captioned appeals (the “Appeals”), and (ii) excusing the parties from the obligation to mediate pursuant to this Court’s Standing Order In Re: Procedures Governing Mediation of Appeals from the Bankruptcy

¹ The Exaeris, Inc. and Inyx USA, Ltd. bankruptcy cases were jointly administered at the outset of their cases at Bankruptcy Case No. 07-10887. However, on December 6, 2007, the Bankruptcy Court vacated the order for joint administration.

Court for the District of Delaware, dated July 23, 2004 (the “Standing Order”), and respectfully represents as follows:

Background

1. On September 17, 2007, Appellant filed an appeal (the “First Appeal”) from the September 7, 2007 order of the Bankruptcy Court titled “Final Order as to Debtor Inyx USA, Ltd. (Case No. 07-10888) (I) Authorizing the Use of Cash Collateral pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection To Westernbank Puerto Rico as the Prepetition Lender, (III) Authorizing Postpetition Financing, (IV) Granting Liens and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 363 and 364, and (V) Modifying Automatic Stay Pursuant to 11 U.S.C. § 362.”

2. The First Appeal was docketed in this Court on October 11, 2007 [07-621 D.I. 5]. Pursuant to the Standing Order, the parties participated in mediation but were unable to reach a resolution. *See* Letter to Clerk of Court from Vincent J. Poppiti regarding completion of mediation, dated February 5, 2008 [07-621 D.I. 7].

3. Pursuant to the Stipulated Briefing Schedule [07-621 D.I. 9], the parties have fully briefed the First Appeal. Westernbank and Stephen S. Gray, chapter 11 trustee for Inyx USA, Ltd., as appellees, have filed applications for oral argument. [07-621 D.I. 17 & 18, respectively].

4. On April 14, 2008, Appellant filed an appeal (the “Second Appeal”) from the April 3, 2008 order of the Bankruptcy Court titled “Final Order (I) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Westernbank Puerto Rico as the Prepetition Lender, (III)

Authorizing Further Postpetition Financing, (IV) Granting Liens and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 363 and 364, and (V) Modifying Automatic Stay Pursuant to 11 U.S.C. § 362.”

5. The Second Appeal was docketed in this Court on May 7, 2008 [08-270, D.I. 5]. Mediation has not yet taken place, as required by the Standing Order.

6. On May 8, 2008, Appellant filed the instant Motion seeking to consolidate the Appeals, and to be excused from the obligation to mediate the Second Appeal in accordance with the Standing Order [08-270, D.I. 6, 07-621 D.I. 19].

Objection

7. The Appeals should not be consolidated. Each Appeal relates to a separate and distinct financing order entered nearly seven months apart. The factual records underlying the Appeals are separate and distinct. As a result, consolidation would confuse the issues.

8. No prejudice will result to any of the parties if the First Appeal is resolved while the Second Appeal is still pending, nor will prejudice result if the Appeals are ultimately decided differently.

9. In addition, the cases are at different procedural postures. The First Appeal concerns an order of the Bankruptcy Court entered in September of 2007. It has now been fully briefed, and is ready for oral argument or decision. The Second Appeal has not been briefed, and the parties have not yet undertaken mediation pursuant to the Standing Order. Consolidation would thus further delay the prosecution of the First Appeal. The dilatory prosecution of the First Appeal prejudices Westernbank insofar as Westernbank continues to finance the Inyx USA estate on terms substantially

similar to those challenged in the First Appeal, without any certainty as to whether those terms will be upset on appeal.

WHEREFORE Westernbank respectfully requests that the Court deny the Motion, and grant such other and further relief as may be just.

Dated: May 19, 2008
Wilmington, Delaware



Francis A. Monaco, Esq. (Del. Bar No. 2078)
Steven K. Kortanek, Esq. (Del. Bar No. 3106)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
222 Delaware Avenue, Suite 1501
Wilmington, Delaware 19801
Telephone: (302) 252-4363
Facsimile: (302) 661-7728

— and —

Harvey R. Miller
Shai Y. Waisman
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Westernbank Puerto Rico

CERTIFICATE OF SERVICE

I, Heidi E. Sasso, certify that I am not less than 18 years of age, and that service of the foregoing document was made on May 19, 2008 upon:

**Sheldon K. Rennie, Esq.
Anthony Sacullo, Esq
Fox Rothschild LLP
919 N. Market Street, Ste. 1300
Wilmington, DE 19801**

**Michael Menkowitz, Esq.
Fox Rothschild O'Brien & Frankel
2000 Market Street, 10th Floor
Philadelphia, PA 19103**

**Bruce Grohsgal, Esq.
Pachulski Stang Ziehl & Jones
919 Market Street, Ste. 1700
Wilmington, DE 19801**

**Christopher Ward, Esq.
Klehr Harrison Harvey Branzburg & Ellers LLP
919 Market Street, Ste. 1000
Wilmington, DE 19801**

**Richard L. Schepacarter
United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899-0035**

**Ballard Spahr Andrews & Ingersoll, LLP
Attn.: Tobey M. Daluz, Esquire
919 N. Market Street, 12th Floor
Wilmington, Delaware 19801**

Under penalty of perjury, I declare that the foregoing is true and correct.

____5/19/2008_____
Date

_____/s/ Heidi E. Sasso_____
Heidi E. Sasso